

Warner

Improving criminal law on subject below
Unauthorized disclosure of info.

Inadequacy of Espionage Laws.
Impossibility of an Official Secrets Act.

Draft law

"Intelligence Data"

Subject of ad hoc USIB Committee.
(now discharged, w/ understanding
that Agency wd. study the matter
further)

Communication Intelligence Law.

Espionage Laws

File

legislation
64-65

U.S. law pertaining to Emergency Detention of Suspected
Security Risks. 50 U.S.C. (58 Ed.) p. 8959.

legislation

Blackmail legislation Memo, signed out to JDM.

division 65

Nothing.

division 63

Nothing.

division 64

Nothing.

Legislation Act - Espionage laws. - Good Material.

Consider relationship between E.O. outlining classification authority + espionage laws.

Problems: Qs of fact of citizen's ^{Testimony as to his position} intent in securing the info., disclosing ^{Threat} it to another, ^{Testimony as above.} the nature of the info., the Q. of whether it ^{Testimony as above.} shd. be so classified.

Prob. of innocent disclosure ^{Avoided by the extortion approach.} by a citizen.

Problem of defining the info. in Q.

Atomic Energy Act

Scope of the Esp. Laws - national, national + omniscience, international. Prob. of exercise of criminal jurisdiction beyond U.S. borders. Only where Congressional statute authorizes it. 27 Fed. Cos. 1132

U.S. v. Bowman, 260 US 94

Review.

~~Blackmail Legislation~~ Blackmail Legislation.

Check the letter-writing legislation.

✓ Extortion.

Communication Intelligence Law

USIB Committee report.

Official Secrets Act

Jurisdictional problem: Where can the act be enforced.

Extortion by revenue officer: 26 USC 7214 (a)

Circumstantial Evidence: Of knowledge acquired.

✓ 17 ALR 339, 344

✓ 68 ALR 920

✓ 83 L. Ed. 911

✓ 4 L. Ed. 2d 1845 - Discussion extortion under the Hobbs Act.

Already covered USCA, AmJur, CJS, ALR, Guide to
Legal ~~Publications~~ Publications.

262 F2d 272, 197 F2d 316, 255 F2d 350.

* L.R.A. 1918 C, 65

Freedom of Speech

Statute has prohibited interference w/ draft + enlistment.

262 F. 885 - *Saebach v. U.S.* Notes 1

40 Stat 217, c. 30: The const. guaranty of freedom of speech does not warrant one in exercising such right in time of war as as to destroy the nation + to hamper military ops. (1919).

63 L.Ed. 566 - *Dabs v. U.S.* Note 1

Same situation as above. Held: such speech is not protected under 1st Amendment. Based on *Schenck*.

63 L.Ed. 1173 - *Abrams v. U.S.* Note 1

Same situation as above.

63 L.Ed. 561 - *Frohwerk v. U.S.* Notes 1, 3

Same situation as above.

63 L.Ed. 470 *Schenck v. U.S.* Note 9

Holmes: clear + present danger rule. Will there result "a clear + present danger that they [the words] will bring about the substantive evils that Congress has a right to prevent. It is a Q. of proximity + degree." Time of war changes the threat or degree of danger.

U.S. v. Burleson, 65 L.Ed. 709 Notes 6.

Same as above in re mailing privileges + denial

195 F.2d 583, U.S.v. Rosenberg. Note 4

Communication to a foreign agent of secret material connected w/ the national defense can by no far-fetched reasoning be included w/in the area of First-Amendment protected free speech.

As interpreted in the Gorin case, the statute forbids nothing except such communication.

U.S. v. Haine, 90 L.Ed.1168

Problem: Suppose dft. charges that Intell. Data is public info.? Could he demand right to so prove? Can he be convicted if it is public info.? Can you murder a dead man?

Problem: What about info. not yet formally classified - e.g. oral info. or exclusions? Does definition of Intell. Data cover this?

Answer - Test is whether dft. knows or has reason to know that this is Intell. Data.

Problem: Categories of people subject to the act.

Problem: Categories of people receiving the Data.

Problem: People who leave the govt. - Are they bound to silence forever?

Gorin v. U.S., 111 F.2d 712, 85 L.Ed. 488, 1144

Problem: Disclosure of secret info.

Problem: Have to prove that info. was passed.

Problem: Creating a new category of info. over + above normal classifications.

Scarbrough case: 223 F.Supp. 900; 317 F.2d 546

Govt. Pen. 375 U.S. 874, 84 S.Ct. 35 N L.Ed. 2d 105

Approved For Release 2003/10/16 : CIA-RDP67B00446R000500050008-4
182 F.Supp. 479, 136 F.Supp. 596.

~~Colony Helen~~

~~the Income Tax~~

~~Living in Kansas for 1st 6 years until ~ 29 June 44~~

~~2-25-44~~

Scarbeck Case:

Decision on not having to prove classification in court was based on fact that 50 USC 783 (b) was a new statute

- 1) Applicable to a limited category of persons. Officers & Ees of the U.S.
- 2) dealing w/ "classified" info.; the Govin case, on the other hand applied the Espionage Act of 1917 dealing w/ info. connected w/ or relating to the national defense to be used to injury of U.S. or advantage of foreign nation.

Blackmail Legislation

1. Holdridge v. USA, 31 Aug. 60, CCA - 8

Where 18 USC 1382 referred to an act "for any purpose prohibited" in an earlier # of the section, "motive to some extent at least is an element of the offense here defined."

"Purpose ~~must~~ + the prohibition must ^{both} be proved." ^{the latter.}
for purposes of the offense in the earlier #, not necessarily.

Under certain circumstances a "statute can be construed as not requiring criminal intent."

The elimination of this element is then not violative of the due process clause. (p. 14)

Info.

2. Problems in defining info.: What about info. that is known inside + outside the govt.?

Perhaps we shd. refer to info. acquired in course of duties? No. This would include too many things. How about just intelligence data? But what then about info. on which there has been publicity. Adm. prob. of PCI's determination that info. is Intell. Data. What about oral info., oral conclusions developed at a mtg.

3. Conclusion seems to be that subject knows or has reason to know that the info. is Intell. Data.

BYVDR

Subject 4. Subject shd. know that person receiving info. is
Person receiving entitled to so do.

Subject 5. Connection between subject + source of the info.
(e.g. DIA, CIA, State, Defense, etc.)

6. Problem: What about people who leave Govt. positions
Are they bound to silence forever? How can
they ever learn that they can talk about their
acquired knowledge?

7. Internal Security Act of 1950. } U.S. Supreme Court decisions.
Subversive Control Act.
Executive Order 10450
" " " " 10501
Atomic Energy Act
50 USC 783(b)
18 USC 2071
Review cases in USCA

Title 18, Chap. 37 - Espionage + Conspiracy -, §§ 791 + seq.

§ 791: Repealed by P.L. 87-369. Used to limit application of espionage laws. Its repeal extended application of Chap. 37 to anywhere in the world.

Legislative history 1961 U.S. Code + Cong. + Admin. News. 3250.

U.S. criminal laws may have extraterritorial effect -

U.S. v. Bowman, 260 U.S. 94. Can re citizens of U.S. in a foreign country were subject to penal laws enacted to protect U.S. + its property.

Crimes v. U.S. committed abroad are triable under 18 USC 3230 in the district where offender is found or into which he is first brought.

§ 792 Harboring or concealing persons.

§ 793(a): Requirements: Purpose - of obtaining w/ intent.

Entry + obtaining
info. in re facility.

Intent or reason to believe - info used v. U.S. or for foreign nation.

Obtains info. -

~~Unlawfully~~ Connected w/ national defense - (of U.S.)

or

(b): Purpose - same. Intent or reason to believe - same.

Copies or obtains, etc. map, etc.

Connected w/ national defense

or

(c): Purpose - same. Knowing or having reason to believe - violation.

Obtaining copy,
etc. of map,
etc.

7.
Receiving +
obtaining.

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Receiving or obtaining
Connected w/ national defense

Delivery

(d): No purpose - but action must be wilful
Communicates, delivers, etc. - to one not entitled.
Having possession, etc. - of items in (c) plus info.
Related to national defense.
Info. - possessor has reason to believe - ed. be used
vs. U.S. or for foreign nation.

or

Delivery

(e): No purpose - but retention must be wilful.
Unauthorized possession - of same as above.
Relating to national defense
Inf. - same as above.
Communicates, delivers, etc. - to one not entitled
or retains

or

Poor Control

(f) No purpose - other than gross negligence or knowledge.
Lawful possession - of same as above
Info not in a special category
Relating to national defense.
Permits removal - ~~they~~ thru gross negligence
or
Fails to report removal

Commits a felony.

Conspiracy

(g): Both conspiracy and partial violation required.

~~Mr. [unclear] 2500 [unclear]~~

10 U.S.C. 794:

- (a) Same as §793 (d.) + (e.) except no type of possession is required. Directs itself toward delivery.
- (b) Gathering or communicating in time of war. Deals w/ military info.
- (c) Conspiracy section.

§ 795 Photographing + sketching defense installations.

§ 796 Use of aircraft for purpose of § 795.

§ 797 Publication + sale of photos, sketches, etc.

§ 798 Disclosure of classified info. in re certain categories as specified. Wd. require disclosure of the info.
Definition of "classified info."

§ 798 Temporary Extension of § 794.

§ 799 Violation of laws of NASA.

Problem: Proving that classified info. has not become public info. - U.S. v. Heine, 90 L.Ed. 1608.

Disclosure of secret info. Gorin v. U.S. 111 F.2d 712, 85 L.Ed. 488, 85 L.Ed. 1144

2 Nov. 60 Houston Memo

British Official Secrets Act - Based upon privilege.
Trial can be held in camera.

Presumption that info passed in certain cases.
Not necessary to prove that info relates to national defense + security.

Analogy to Govt. developed processes, etc.
But perhaps our system would rule that such developments shd. be held for the people.

Problem: Have to prove to whom the info. was passed. No crime to pass to one ~~not~~ authorized to receive

31 August 1962 Memo for Acting DCI by Warner.

Problems of creating a new category of classified info. over + above normal classifications.

50 USC 783 (b)

Memo 21 Jan 63 *Scarbeck Case - Ct App. held that Govt. did not have to prove that the classified documents in Q. justified their classification. Classification, once given, was conclusive.*

1. July 1963 Memo for USIB
Injunction wd. work when actual extortion is not imposed.
2. Aug. 63 Memo for Director DIA
Criticisms of the proposed draft as of then.
Improper legislative form. Relationship + effect on existing criminal statutes not clear, belabored definition of intelligence data, grant of rule-making authority derogates existing authority; injunctive authority too broad when tied also w/ rules + regs.
- 30 Sep. 63: De Rosa's attempt to explain away DIA's memo.
- 42 USC 2280 - Atomic Energy Act Injunction §.

Danger of a broad, new act. Why not amend existing acts - e.g. 50 USC 783?

Cases on Criminal Jurisdiction Abroad.
288 F.2d 595, 67 F.2d 196, 182 F. Supp. 479,
136 F. Supp. 546